



Federal Communications Commission  
Washington, D.C. 20554

March 27, 2008

DA 08-746

David Cook  
Regional Transit Service, Inc.  
1372 East Main Street  
Rochester, NY 14609

Re: Request for Extension of Time to Construct Paging License (WPVH396)

Dear Mr. Cook:

This letter addresses the above-captioned Request for Extension of Time to Construct (Waiver Request), filed by Regional Transit Service, Inc. (RTS) on June 15, 2007, seeking waiver of the construction requirements of section 22.503(k)(2) of the Commission's rules<sup>1</sup> for a geographic area-based Part 22 paging license located in the Rochester, NY – PA Economic Area (Rochester license).<sup>2</sup> Specifically, RTS requests a waiver of the construction deadline until May 31, 2008 to complete construction of the Rochester license. For the reasons stated below, we grant the Waiver Request.

Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, RTS's license will terminate automatically as of the construction deadline if RTS fails to meet the requirements of section 22.503(k)(2),<sup>3</sup> unless the Commission grants an extension or waives the construction requirements.<sup>4</sup> The construction deadline for the Rochester license was June 21, 2007.

A waiver may be granted, pursuant to section 1.925(b)(3) of the Commission's rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>5</sup>

RTS is a wholly-owned subsidiary of the Rochester Genesee Regional Transportation Authority, a regional transit authority established in 1969 by the New York State legislature as one of four state-

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<sup>1</sup> 47 C.F.R. § 22.503(k)(2).

<sup>2</sup> Request for Extension of Time to Construct (filed June 15, 2007) ("Waiver Request"); Amendment to Request for Extension of Time to Construct (filed January 8, 2008) ("Amendment to Waiver Request"). See File No. 0003073302.

<sup>3</sup> Pursuant to section 22.503(k)(2) of the Commission's rules, an EA paging licensee must construct facilities to cover two-thirds of the population of its license area within five years of initial license grant. 47 C.F.R. § 22.503(k)(2).

<sup>4</sup> 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

<sup>5</sup> 47 C.F.R. § 1.925(b)(3). The Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving construction requirements on a case-by-case basis. See Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

mandated transit authorities.<sup>6</sup> RTS acquired the Rochester license (where the license is a channel pair) in June 2002 as the winning bidder in Auction No. 40. RTS states that it provides transit services to the greater Rochester, New York area.<sup>7</sup> RTS also states that its service area covers approximately 670 square miles and has a population of 735,343.<sup>8</sup> RTS plans to implement a radio system that allows its supervisors and management personnel to have access to dedicated communications channels in order to manage its transit bus fleet, which can number in the hundreds at peak times and serve over 50,000 riders each day.<sup>9</sup> RTS states that its system will better allow supervisors to dispatch extra buses and/or re-route buses, including during weather emergencies and mechanical breakdowns.<sup>10</sup> RTS states that it already completed construction of another license that will be used for its system; however it could not complete construction of its Rochester license because it had to first obtain Canadian approval.<sup>11</sup> RTS's June 15, 2007 Waiver Request sought an extension until 45 days after it received Canadian clearance.<sup>12</sup> RTS's January 8, 2008 amendment stated that Canadian clearance had been obtained, but due to the severe winter conditions that occur in Rochester, NY, it now seeks an extension until May 31, 2008.<sup>13</sup> RTS states that the average high temperature in Rochester during winter is 32 degrees and that Rochester receives on average 95 inches of snow.<sup>14</sup> As a result of these conditions, RTS states that it would not be in a position to construct its system until the snow melted and contends that an extension would be in the public's interest.<sup>15</sup>

Based on the totality of the circumstances involved in this case, we believe that the public interest would be served by extending the construction deadline for the Rochester license until May 31, 2008. Specifically, we find that automatic termination of the Rochester license pursuant to Section 1.946(c) would not serve the underlying purpose of the construction rule, and that grant of the waiver would be in the public interest.<sup>16</sup> The record indicates that RTS has been diligent in implementing its system and with the extra time granted here would be able to enhance its system to provide for safe and reliable bus service to the greater Rochester, New York area. Further, termination of the Rochester license would not serve the public interest now that RTS received Canadian approval. We expect that RTS's system will provide public interest benefits such as allowing extra buses to be dispatched and/or re-routed during weather and other potential emergencies. Finally, we believe that granting RTS the additional time it has

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<sup>6</sup> Waiver Request at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1. Canadian approval is required for certain frequencies, including those associated with the Rochester license, when the proposed facilities will be above Line A. *See* 47 C.F.R. § 1.928.

<sup>12</sup> *Id.*

<sup>13</sup> Amendment to Waiver Request at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See* 47 C.F.R. § 1.925(b)(3)(i).

requested to construct its system is consistent with the Commission's public interest goal of promoting efficient utilization of spectrum in the near term.<sup>17</sup>

Accordingly, IT IS ORDERED that, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 303(r) and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request by Regional Transit Service, Inc. for Extension of Time to Construct IS HEREBY GRANTED, to extend the construction deadline for license WPVH396 until May 31, 2008.<sup>18</sup>

Sincerely,

Thomas P. Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>17</sup> See Interstate Power and Light Co, Requests for Extension of Time to Construct Private Land Mobile Radio Stations WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, and WPBI318, and Waiver of Sections 1.946 and 90.629 of the Commission's Rules, *Order*, 18 FCC Rcd 11051, 11056 ¶ 15(2003).

<sup>18</sup> 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.925.